

# Practicing Before the IRS-Circular 230 A to Z

including amendments effective  
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Professional Responsibility

# Agenda

## **Office of Professional Responsibility “Soup to Nuts”**

- **History**
- **Procedures**
- **Circular 230 Provisions**

# The Statute

- 31 U.S.C. §330 (1884)
- Authorizes regulation of representatives of persons before the Department of the Treasury

# “Fitness” to Practice

- Good character
- Good reputation
- Necessary qualifications to provide valuable service to the client
- Competency to advise and assist persons in presenting their cases

# The Regulations

- 31 C.F.R. Subtitle A, Part 10 (1886)
- Guidance for all administrative practice conduct
- Treasury Department Circular No. 230 (1921)
  - Four subparts:
    - Authority to Practice
    - Duties and Restrictions Relating to Practice
    - Sanctions for Violations
    - Disciplinary Procedures

# Circular 230

- Available on IRS.gov – search using keyword “Circular 230” (<http://www.irs.gov/pub/irs-pdf/pcir230.pdf>)
- Significant revisions as of June 12, 2014
- Form 2848 attestation:  
"I am subject to regulations contained in Circular 230...,as amended, governing practice before the Internal Revenue Service." (Effective 7/2014)

# Circular 230 and OPR

- OPR Authority and Responsibility:
  - Reg. 10.1(a)(1)- exclusive authority for disciplinary proceedings and sanctions
  - Practice Standards Oversight
  - Independent Investigations
  - Propose/Negotiate Discipline
  - Administrative Hearings & Appeals

# Practice

- **All** matters connected with a presentation to the IRS relating to a taxpayer's rights, privileges, or liabilities under laws or regulations **administered by** the IRS
- Preparing or filing documents, corresponding and communicating with the IRS, rendering written advice, and representing a client at conferences, hearings and meetings
- Not mere tax return preparation



# Procedures to Ensure Compliance - §10.36

- Anyone who has, or shares **principal authority and responsibility** for overseeing a firm's Cir 230 practice must take **reasonable steps** to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of **complying with Subparts A, B and C of Circular 230**.

# Procedures to Ensure Compliance (Cont.)

- If firm does not identify, OPR may identify
- Anyone identified as having this principal authority **will be subject to discipline for failing to comply if--**

# Procedures to Ensure Compliance (Cont.)

- (1) Through willfulness, recklessness, or gross incompetence fails to take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place, **and properly followed**, and individual(s) members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice of failing to comply with Circular 230; or

# Procedures to Ensure Compliance (Cont.)

- (2) Knows or should know that individual(s) members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice of failing to comply with Circular 230, and who fails to take prompt action to correct the noncompliance.

# OPR Discipline Process

- Referrals
- Evaluate for jurisdiction, 230 violations and willful, grossly incompetent or reckless conduct
- Consider Alternative Discipline Options or Pre-Allegation Letter
- Investigation– Allegation letter
- Dispute – Due Process
- Final Agency Decision

# Discipline Options

- Reprimand (Private)
- Censure
- Suspension
- Disbarment
- Monetary Sanction (Individuals and Firms)

# Final Agency Decisions

- Final Agency Decisions after 09/26/2007 are published on the OPR webpage
- A decision becomes the FAD:
  - 1) After Administrative Law Judge Initial Decision and Order and no appeal is filed with the Appellate Authority within 30 days; or,
  - 2) Immediately after the AA issues his or her decision in the case
- The practitioner may file a complaint against OPR and take issue with the FAD in Federal District Court

# Key Circular 230 Provisions

- Diligence as to Accuracy (10.22)
- Due Diligence Standards – Returns/Docs (10.34)
- Negotiation of Taxpayer Checks – (10.31)
- Giving False or Misleading Info (10.51(a)(4))
- Willfully Assisting, Counseling or Encouraging a Client to Evade Taxes or Payment Thereof (10.51(a)(7))
- Conflicting Interests (10.29)
- Due Diligence for Written Advice (10.37)
- Competence (10.35)
- Expedited Suspension (10.82)



# Diligence as to Accuracy –

## § 10.22

- Must exercise Due Diligence in:
  - Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
  - Determining correctness of oral/written representations made to the client or to Treasury personnel.
- Reliance on Another's Work Product? Only With Reasonable Care

# Standards for Tax Returns Section - § 10.34(a)

- May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if:
  - Lacks reasonable basis
  - Unreasonable position (6694(a)(2))
  - Willful attempt to understate liability (6694(b)(2)(A))
  - Reckless, intentional disregard of rules and regulations (6694(b)(2)(B))
- Patterns matter

# Standards for Documents and Other Papers - § 10.34(b)

- May not advise taking positions that are frivolous
- May not advise submissions:
  - to delay or impede tax administration
  - that are frivolous
  - containing or omitting information that demonstrates an intentional disregard of rules or regulations

# Penalties and Client Reliance - § 10.34(c),(d)

- Must advise client of potential penalties and their avoidance through disclosure (10.34(c))
- Reliance on client information in good faith, without verification, is OK, but...
  - Cannot ignore implications of other information furnished
  - Cannot ignore actual knowledge
  - Must make reasonable inquiries for incorrect, inconsistent or incomplete information (10.34(d))
- No Willful Blindness

# Negotiation of Taxpayer Checks – § 10.31

- May not endorse, negotiate, direct any US Treasury check in another's name
  - No cashing
  - No endorsing
  - No depositing to a controlled account
  - No split electronic transfers
  - Client concurrence is irrelevant
  - IRC 6695(f) penalty

# Disreputable Conduct –

## § 10.51(a)(4)

- No participating in any way in the giving of false/misleading info to the Dept. of Treasury or any officer/employee thereof
- Includes:
  - Testimony
  - Federal tax returns
  - Financial statements
  - Applications
  - Affidavits, declarations, and any other document or statement, written or oral

# Disreputable Conduct cont. -

## § 10.51(a)(7)

- Willfully assisting, counseling, encouraging, suggesting to a client/prospective client:
  - An illegal plan to evade Federal taxes or payment thereof
  - Violation of any Federal tax law

# Conflicting Interests - § 10.29

- One client's interest directly adverse to another
- Significant risk of material limitation
  - By responsibilities to
    - another client,
    - former client,
    - third person
    - OR, by the **personal interest of the practitioner**



# Conflicting Interests (Cont.)

- May represent if:
  - **You** have a reasonable belief in your ability to provide competent, diligent representation to each affected client; and,
  - Not legally prohibited; and,
  - EACH affected client waives conflict, by giving **informed** consent – in writing at the time conflict is known.

# Due Diligence for Written Advice - § 10.37

- Reasonable factual and legal assumptions
- Reasonably consider all relevant facts
- Reasonable efforts to identify and ascertain the relevant facts
- No unreasonable reliance on representations, statements, findings, or agreements = if you know or should know the information is based on incorrect, incomplete, inconsistent representation/assumption

# Due Diligence for Written Advice (Cont.)

- Apply applicable law to relevant facts
- No audit lottery positions or advice
- Reliance on advice of others? Ok, if the advice was reasonable and the reliance is in good faith
- Applies to All federal tax matters

# Due Diligence for Written Advice (Cont.)

- Reasonable practitioner standard applies
- Facts & circumstances considered – Scope, type, specificity
- Advice used for marketing/promo or tax avoidance/evasion planning– additional scrutiny for practitioner's lack of knowledge of the intended audience

# Competence - § 10.35

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
- Be competent
- Become competent
- Hire/consult competence

# Expedited Suspension - § 10.82

- Authorizes immediate suspension of a practitioner who within 5 years prior to the date that a show cause order is served has demonstrated a pattern of willful disreputable conduct by –
  - Failing to make an annual Federal tax return during 4 of the last 5 tax years immediately preceding the institution of the proceeding and remains non compliant with any of the practitioner's Federal tax obligations at the time the notice of suspension is issued; or

# Expedited Suspension (Cont.)

- Failing to make a return required more frequently than annually during 5 of the last 7 tax periods immediately preceding the institution of the proceeding and remains non compliant with any of the practitioner's Federal tax obligations at the time the notice of suspension is issued
- Five year rule now applies to indefinite suspensions

# Oral or Written Opinions – § 10.51(a)(13)

- Disreputable/Incompetent Conduct
  - False opinions-knowingly, recklessly, through gross incompetence;
  - Intentional or recklessly misleading opinions;
  - Pattern of Incompetent Opinions.



# Oral or Written Opinions (Cont.)

- False Opinion =
  - Knowing misstatements of fact/law;
  - Assertion of unwarranted positions;
  - Counseling/assisting conduct known to be illegal/fraudulent;
  - Concealing matters required by law to be revealed.

# Oral or Written Opinions (Cont.)

- Reckless conduct=
  - Highly unreasonable omission/misrepresentation from standards of ordinary care that a practitioner should observe under the circumstances
- Gross Incompetence=
  - Gross indifference, grossly inadequate preparation, consistent failure to perform obligations to client
- Patterns matter

# Resources available on IRS.gov

- Treasury Department Circular No. 230 (Rev. 6-2014)  
Regulations Governing Practice before the Internal Revenue Service
- Subscribe to News and Updates from the Office of Professional Responsibility
- Guidance to Practitioners Regarding Professional Obligations Under Treasury Circular No. 230
- Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service
- Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases
- Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service

# Contact Information

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